Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

NON-COMMERCIAL PARTNERSHIP HOCKEY CLUB LOKOMOTIV YAROSLAVL,

Plaintiff,

v. 06 CV 9421 (LAP)

NATIONAL HOCKEY LEAGUE, CALGARY FLAMES LIMITED PARTNERSHIP D/B/A CALGARY FLAMES, AND EDMONTON INVESTORS GROUP LTD. D/B/A/ EDMONTON OILERS,

Defendants.

----------x

and

----------x

ANO HOCKEY CLUB METALLURG MAGNITOGORSK,

Plaintiff,

v. 06 CV 9936 (LAP)

NATIONAL HOCKEY LEAGUE AND LEMIEUX GROUP L.P. D/B/A PITTSBURGH PENGUINS,

Defendants.

----------x

New York, N.Y.
November 15, 2006
2:30 p.m.

Before:

HON. LORETTA A. PRESKA,

District Judge

APPEARANCES

ALEXANDER BERKOVICH
Attorney for Plaintiffs

PROSKAUER ROSE
Attorneys for Defendants
BY: BRADLEY I. RUSKIN
SCOTT A. EGGERS

THE COURT: All right. Counsel, thank you for your arguments and papers. This has been nothing other than a complete treat to have you here.

We all at least agree that on a motion for a preliminary injunction, the movant must establish that one, absent such relief it will suffer irreparable injury; and two, either, A, a likelihood of success on the merits, or B, sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the moving party.

For the moment, I do not address the enhanced standard required when one is interfering with the status quo.

With respect to irreparable injury, if an injury can be appropriately compensated by an award of monetary damages, then an adequate remedy at law exists and no irreparable injury may be found to justify the specific relief. Register.com, Inc. v. Verio, Inc., 356 F.3d 393, 404 (2d Cir. 2004).

"A showing that the movant will suffer irreparable harm if the preliminary injunction is not granted is the most important prerequisite for the issuance of a preliminary injunction." Transperfect Translations International, Inc., v. Merill Corp, Number 2004 WL 2725032 at *4 (S.D.N.Y., November 30, 2004) (Quoting Bell & Howell: Mamiya, Co. v. Masel Supply, Co., 719 F.2d 42, 45 (2d Cir. 1983)) "A party's delay in moving for preliminary injunctive relief undercuts the sense

of urgency that typically accompanies such a motion." Transperfect 2004 WL 2725032 at *4 (Citing Tough Traveler Ltd. v. Outbound Products, 660 F.3d 964, 968 (2d Cir. 1995)

As the plaintiffs point out here, the contracts between the plaintiffs and the players acknowledge that the players' services are unique, and a loss of those services cannot be compensated by money damages. Indeed, that is the general rule in personal services contracts, including those involving professional athletes.

The unique facts of these cases, however, persuade me that plaintiffs are unlikely to be able to prove that they cannot be compensated by money damages. Put more plainly, these cases were always about money, the only issue is how much.

As the parties have laid out in detail in their papers, particularly in the declaration of William L. Daly, deputy commissioner of the NHL, for many years the NHL and the IIHF had been parties to comprehensive agreements that governed, among other things, the transfer of players to the NHL from the IIHF sanctioned hockey leagues in their home countries, and the member federations of the IIHF.

Broadly speaking, the purpose of this NHL IIHF agreement was to create an orderly and efficient time framework to facilitate the transfer of players from the IIHF member federations to the NHL, and to provide monetary assistance to

those federations to help support the growth and development of ice hockey in IIHF member countries.

For example, the current version of the NHL IIHF agreement provides that the NHL pay a "development fee" of $200,000 for each player from a IIHF league who transferred to an NHL club, requesting "in exchange the NHL receives right to sign the players to play in the NHL, despite their having effective contracts in their home countries."

The IIHF and its members determine distribution of the amounts paid by the NHL, but Mr. Daly opines that those funds go primarily to the home teams of the transferred players.

As also set out in Daly declaration, the RIHF, a member of the IIHF, declined to join the current NHL IIHF agreement. In negotiations leading up to the RIHF's decision to opt out of the current agreement, the primary question from the RIHF was how much money it would receive in compensation for each player. This is of course according to Mr. Daly.

Although the NHL indicated that more compensation might be available, the parties were unable to reach an agreement that satisfied the RIHF's monetary demands.

As Mr. Daly recounts in his declaration, during the course of these negotiations, including a May 2006 meeting in Riga, Latvia, and a June 2006 meeting in New York, the principal issue was money, and at the June meeting, the issue was specifically the amount of compensation that plaintiff

Metallurg would receive for the transfer of Mr. Malkin.

Mr. Daly details that on June 29, 2006, he received an e-mail from Sergey Arutyunyan, general director of the RIHF, demanding the payment of one million dollars as compensation for the transfer of Mr. Malkin to the Pittsburgh Penguins. In response, Mr. Daly e-mailed Mr. Arutyunyan, noting that under the NHL IIHF agreement, if the transferred player signs an NHL contract, but instead of playing for the NHL, he plays primarily for a minor league team, the NHL pays additional fees referred to as minor league assignment fees to the IIHF.

It was Mr. Daly's contention that the pooling of such minor league assignment fees together with the $200,000 transfer fee would amount to approximately a million dollars being paid by the NHL for the transfer of Mr. Malkin.

In a July 2006 meeting in Chicago, Mr. Tretiak, president of the RIHF, is said by Mr. Daly to have told him that if Mr. Tretiak could secure a million dollars for transfer of Mr. Malkin, Mr. Tretiak was confident that he would receive the approval of the plaintiffs for the transfer.

In response, in July, and again in August of 2006, Mr. Daly agreed to structure the transfer fee and the minor league assignment fees so as to total one million dollars for the transfer of Mr. Malkin.

During the latter part of July, however, Mr. Daly learned that the RIHF was then demanding a million dollars in

addition to the $800,000 in minor league assignment fees for the transfer of Mr. Malkin. Mr. Daly refused.

Indeed, the plaintiffs' true intent was confirmed as late as October 4, 2006, in Mr. Berkovich's letter to Messrs Ruskin, Daly and Shero, the last the general manager of the Pittsburgh Penguins. In that letter, Mr. Berkovich concluded by demanding that the NHL and the Pittsburgh Penguins not use Mr. Malkin in the 2006/2007 season, but "to the extent that the Pittsburgh Penguins nevertheless is interested in obtaining the services of Mr. Malkin for the 2006/2007 hockey season, you should contact me with your proposal."

At oral argument, as we've heard, I did ask counsel what the latter part of that sentence could possibly mean if it was not money, and did not get a satisfactory response.

I also note that plaintiffs have themselves characterized themselves as "sellers" of the services of hockey players.

I also note that Ted Saskin, executive director and general counsel of the NHLPA, confirms Mr. Daly's conclusion that the negotiations to persuade the RIHF to sign the current NHL IIHF agreement were unsuccessful "primarily because of the monetary demands that the RIHF made regarding Malkin and his imminent transfer to the Pittsburgh Penguins." He also confirms Mr. Daly's summary that the principal discussion at the June 2006 New York meeting was the amount of money

Mr. Malkin's Russian club would receive for his transfer.

I note that there are no affidavits in the record specifically refuting or contradicting the focus on money that has been detailed at length by Mr. Daly, Mr. Saskin and others.

Thus, despite the general case law, and despite the acknowledgment in the players' contracts, the evidence in the record persuades me that plaintiffs can be adequately compensated by money damages. The only question is, and always has been, how much.

Continuing on the irreparable injury issue, I look to the delay that is evident in plaintiffs proceeding here. And I find that plaintiffs' delay severely undercuts that sense of urgency that typically accompanies a motion for preliminary injunction.

I note in passing that in the year 2000, Mr. Mikhnov participated in and was chosen in that year's NHL draft. Mr. Taratukhin was also selected in the 2001 NHL draft. And as we know, in 2004, Mr. Malkin came to the United States to participate in the NHL draft and was drafted in the first round, second overall, by the Pittsburgh Penguins.

On June 30 of 2006, two of the three players submitted their two week termination notices to their respective teams, Messrs Mikhnov and Taratukhin. On August -- actually, I think all three did on August 30. Am I right on that, counsel?

MR. RUSKIN: Yes, your Honor.

THE COURT: Thank you, counsel. On August 7 Mr. Malkin signed the new one year contract with plaintiff Metallurg. On August 13 of this year, Mr. Malkin submitted his two week termination notice as to the August 7 contract. On September 1, Mr. Taratukhin signed his contract with the Flames. On September 5, Mr. Malkin signed his contract with the Penguins. In mid-September the players all reported to their respective team training camps. On October 3 of this year, Mr. Mikhnov signed his contract with the Oilers. On October 4, the NHL 2006/2007 season began. And these actions were commenced on October 18 and 19.

Based on these facts, it appears that plaintiffs will be unable to show irreparable injury required to justify the issuing of a preliminary injunction because of their delay in seeking such relief.

First, putting aside for a moment the players' earlier expresses of interest in playing in the NHL, and their participation in the NHL draft, plaintiffs slept on their rights for months following the players June 2006 giving of their two week termination notices.

At the risk of mixing metaphors, plaintiffs hid in the tall grass while the players terminated their Russian contracts, signed the NHL contracts, joined their NHL teams, began practicing with the teams, and the NHL season began.

It was only after the players were engaged in the NHL

season playing with their respective teams that plaintiffs came forward to seek relief at the time of maximum inconvenience to the defendants.

While in some circumstances the delay from the June giving of the notices of termination to the mid-October request for relief might not necessarily constitute fatal delay, here the fact that the players trained with their new teams and actually commenced playing with them during the regular NHL season makes the delay unconscionable.

Second, when the facts of the delay are read together with the facts concerning plaintiffs' constant demands for more money for the transfer of players to the NHL, it becomes clear that the delay was in an effort to obtain more money. Thus, further undercutting any claim of irreparable injury.

Accordingly, I find that plaintiffs are unlikely to be able to demonstrate irreparable injury.

I also note in passing plaintiffs' apparent concession, at least with respect to the antitrust claim, that the alleged harm is monetary. Plaintiffs' reply brief at 10, they say "There is a direct causal connection between an antitrust violation here and the alleged harm suffered by plaintiffs.... Indeed, the scheme prohibiting NHL clubs from negotiating with and compensating Russian hockey clubs for the services of Russian hockey players has no legitimate procompetitive justification (and defendants provided none)."

Emphasis added.

Moving briefly to the likelihood of success on the merits. I will not deal with misappropriation. Plaintiffs have cited no case law in support of this cause of action. Defendants point out that it is a common law doctrine concerning improper taking of property rights or other intellectual property rights. It does not appear to apply here. And there doesn't seem to be much argument in the briefs to the contrary.

Also, with respect to unjust enrichment, it doesn't seem anybody talks about this claim much, so I won't either.

With respect to tortious interference, I note preliminarily at this stage, without making a final finding, that it does not appear likely that plaintiffs will be able to prove that there were contracts in existence. This is based first on the Russian law experts. And again, without making a final finding on this, under Rule 44.1, at this point in time, it appears that Ms. Beliakova's declaration is more persuasive. This is particularly because of not only her explanation, but her attachment of the actual statutes that she relies on.

It also appears that the labor law, including the provision for the Article 80 notice prevails over other inconsistent statutes.

So preliminarily on the law as stated by the experts, it does not appear plaintiffs will be able to show the

existence of contracts at the time.

In addition, however, we have the admissions made by the various individuals negotiating on behalf of plaintiffs, with respect to the IIHF NHL agreement. All of those statements, which I will not reiterate here, are to the effect that the two week termination provision of Article 80 remains in effect, particularly Mr. Tretiak, the proposer of the legislation to close this supposed loop hole, urged others to work to move now because the loop hole was going to change, and the like.

The statements and conduct of those negotiating these agreements, together with the conduct of Metallurg in inducing Mr. Malkin to sign a new contract after he had exercised his termination rights under the prior contract, also appeared to concede the point.

Thus, it appears unlikely that plaintiffs will be able to demonstrate the existence of a contract at the relevant time.

In addition, on the facts in the record at this time, it does not appear that plaintiffs will be able to satisfy the but for requirement in showing that but for defendants' actions, the players would not have defected. The players' affidavits make clear that they always wanted to play in the NHL, everyone agrees here that the NHL is the premiere hockey league in the world. The players had participated in the NHL

draft, as I mentioned, some years ago.

And thus, it seems unlikely that plaintiffs will be able to show that but for defendants' conduct, the players would still be playing for the plaintiffs.

With respect to aiding and abetting a breach of fiduciary duty, the parties dispute the governing law. Plaintiffs cite Maryland state law for the proposition that employment contracts contain an implied duty that an employee must act solely for the benefit of his or her employer with respect to all matters falling within the scope of his employment. I am not entirely sure why we would be looking at Delaware law.

Defendants contend that there was no aiding and abetting a breach of fiduciary duty because the Russian players did not owe their teams any duty under Russian law. Plaintiff does not respond to this in the reply papers that I can recall.

Aside from why we would rely on Maryland law, defendants' expert persuades me that it is unlikely that plaintiffs will be able to show that the players had any fiduciary duty to the plaintiffs at all.

With respect to tortious interference with business relations, of course everyone seems to agree that unlawful or wrongful means are required here. Defendants contend that there was no tortious interference with business relationships because there are no allegation of any wrongful means to

achieve the alleged interference. Rather, the defendants contend that they were pursuing their legitimate business objectives of securing assets for their respective teams.

Plaintiffs respond that signing the Russian players "with full knowledge of plaintiffs' contracts" constitutes theft and was authorized by the NHL's August 2, 2006, memo, as a result of its desire to punish the players for the RIHF's refusal to join the latest NHL IIHF agreement.

Again, as I've noted, it does not seem that there was any wrongful means employed by the defendants on this record. On this record, it's clear that the players wanted desperately to play for the NHL, and took all steps to do so. That defendants had knowledge of the plaintiffs' contracts does not seem to be relevant here.

And as was noted during oral argument, the NHL's August 2, 2006, memorandum is virtually the same memorandum, although as counsel points out without the bold typing, but is virtually the same memorandum that had been in effect for some years.

Accordingly, it seems that plaintiffs will be unlikely to prevail on the merits of this claim.

Plaintiffs also assert a claim for conversion and do not seem to dispute that New York law governs the standard here. Under New York law, a conversion claim requires "one who owns and has a right to possession of personal property to

prove that the property is in the unauthorized possession of another, who has acted to exclude the rights of the owner." Key Bank v. Grossi, 227 A.D.2d 841, 843 (3d Dep't 1996).

Defendants of course assert that the services of these players are not personal property and thus that plaintiffs cannot prove up a claim for conversion. Plaintiffs do not respond that I recall in their papers, and accordingly it seems unlikely that they will prevail on this point.

Finally, with respect to the alleged Section 1 claim, Section 1 of the Sherman Act prohibits "every contract, combination... or conspiracy in restraint of trade." Although the plain language of the act would suggest that every contract in restraint of trade violates the antitrust laws, the Supreme Court has long held that the Sherman Act prohibits only unreasonable restraints of trade.

Thus, in order to prevail, "a plaintiff claiming a Section 1 violation must first establish a combination or some form of concerted action between at least two legally distinct economic entities unilateral conduct on the part of a single person or enterprise falls outside the purview of this provision in the antitrust law." Capital Imaging Associates v. Mohawk Valley Medical Associates, 996 F.2d 537, 542, (2d Cir. 1993).

The Court also recognized that certain conduct is immune from the scrutiny of the antitrust laws. "It has long

been recognized that in order to accommodate the collective bargaining process, certain concerted activity must be held to be beyond the reach of the antitrust laws." Clarett v. NFL, 369 F.3d 124, 142 (2d Cir. 2005).

Here defendants contend that there is no cognizable claim under Section 1 of the Sherman Act because the NHL policy on transfer fees and restraint of trade falls within the purview of the collective bargaining agreement, and is thus immune from antitrust scrutiny under the non-statutory labor exception. Clarett 369 F.3d, 140.

As counsels pointed out in the papers, it seems likely that defendants will be able to demonstrate that in fact this policy on transfer fees has been a mandatory subject of the collective bargaining agreements.

In addition, there seem to be various other problems with the antitrust claim. First, there does not seem to be any antitrust injury here, thus no injury to competition. Also it appears, as we noted during oral argument, that plaintiff does not appear to be market participants in the market which they defined. And finally, the activities here at issue seem to be included within the meaning of the Supreme Court's recent Texaco case as the core activities of a joint venture. And thus, would not constitute a combination in restraint of trade.

For all of these reasons, it appears that plaintiffs are unlikely to prevail on the merits of the claim. And for

all of the reasons stated above, the requests for the preliminary injunctions are denied.

Counsel, have I forgotten anything first of all at this moment? Counsel? Anybody?

MR. RUSKIN: No, your Honor.

THE COURT: Hearing nothing, would you folks confer, and after you've had a chance to talk with your clients, let me know in the next day or two how you would like to proceed please.

MR. RUSKIN: Yes, your Honor.

THE COURT: Anything else?

MR. BERKOVICH: No, your Honor.

THE COURT: Thank you, gentlemen. Good afternoon. It was a pleasure having you.

MR. RUSKIN: Thank you, your Honor.

o0o